1-1-1959

The Opinion Volume 9 Number 2 – January 1, 1959

The Opinion

UNIVERSITY OF BUFFALO LAW SCHOOL

OPINION

Vol. 9—No. 2 January, 1959

New York Civil Practice

A Changing Process

by PROF. DAVID KOCHERY

Editor's Note — This article is based upon a speech given to the Erie County Bar Association's Noonday Meeting, given by Mr. David Kochery, Professor, University of Buffalo School of Law. Mr. Kochery was an Associate Reporter to the Committee on Practice and Procedure of the former Temp. Comm. of the Courts.

I fully realize that the New York Civil Practice Act, as reproduced in Clevenger's annual volumes, is not the kind of reading with which one curls up before a roaring fire on a cold winter's night. On the other hand, for better or for worse, civil practice, and a knowledge thereof, comes very close to being the most important part of a lawyer's daily life. And civil practice as we know it in New York is expounded for us by the Civil Practice Act. In addition, of course, various practice provisions are scattered throughout the consolidated and unconsolidated laws — a situation which gives to New York practitioners an opportunity for exploration and touch-and-go adventure which is not available in most other states.

The Civil Practice Act, no matter what others may think, does indeed have some attractive characteristics. many of which are on the fringe of law, so to speak. For example, we may learn much about history in the Civil Practice Act. Section 686, relating to levies under an executive, provides that a levy may be made upon current money of the United States and shall be paid over by the sheriff "without exposing it for sale." We know, of course, that sheriffs do not "sell" money, and wouldn't think of doing it even in the absence of the admonition contained in this section. However, this section, dating from 'the Civil War days, reminds us that at one time a sheriff was required to "sell" money if it was in the form of gold coins. Again, on the historical

Continue on page three

Moot Court Team Wins Regional

The University of Buffalo School of Law Moot Court Team took first place in the Upstate New York region of the Ninth National Moot Court Competition sponsored by the Association of the Bar of the City of New York. The members of the team were Ray Green and Thaddeus Zolkiewicz, Class of '59, and Jack Becker, Class of '60. Mr. Zolkiewicz also won an award as the outstanding advocate. The other participating schools were Albany Law School, Cornell University Law School and Syracuse University Law School.

The fictitious case argued this year, *United States* v. *Akkro Corp.* was an appeal to the Supreme Court of the United States. The trial court had dismissed an indictment against the corporation, for violating the Federal Anti-Corruption Act by expending corporate funds in connection with a Senatorial election campaign, on the ground that the act was unconstitutional. It raised questions of current interest relating to the participation of corporations in political action and involved a determination of several constitutional issues, including freedom of speech, freedom of the press, and the right to assemble and petition the government.

Continue Learning . . .

Editor's note—The following is an edited address delivered by Justice Earle C. Bastow to the November, 1958 Bar Admission Group—Appellate Division. Justice Bastow was elected to the New York Supreme Court in 1947. In 1953 he was designated to serve in The Appellate Division, First Department and continued there until 1956 when he was designated to serve in the Fourth Department.

If perchance you dream that your days of being examined have ended that dream should be shattered at once. Upon your entry into a law office you will find your associates and seniors continuing to probe, question and examine your legal knowledge, and your ability to apply that knowledge to the problems presented. Soon the day will come when court appearances must be made. There you will find juries, trial judges and appellate judges continuing to vocally or silently question and examine your knowledge of the applicable law and also your acquaintanceship with the facts that

Continue on page six

Necessary Legal Reform In New York State

by RICHARD VALINSKY

The following article is based on the remarks of Judge Charles S. Desmond, New York Court of Appeals following the Red Mass at the Waldorf Astoria, New York City, October 19, 1958; and also on a more recent interview with Judge Desmond, and on a report of the Judicial Conference of the State of New York.

(Judge Desmond received his LL. B. from the University of Buffalo in 1920. In January, 1940 he was appointed to the New York State Supreme Court. He was elected to the New York Court of Appeals on November, 1940 and again in November, 1954 for a term expiring December 31, 1966. In 1954 he was awarded the University of Buffalo citation for distinguished service to the legal profession and in 1955 he received the Brotherhood Award from the National Conference of Christians and Jews. He is an active member in various organizations of the legal profession and has lectured at the law schools of seven universities. Among his many current activities he is lecturing on "Appellate Problems" at Cornell Law School and in the coming semester he is scheduled to lecture on Legal Ethics.

There is a need for molding the Court and Bar of New York State into a single strong modern instrument for better and speedier justice. Today a nation-wide movement to modernize the administration and structure of state court system has already produced a few simple sound methods, until now rejected in this State, for producing an efficient court system. The basic approach to this problem has been to: 1. Centralize administration; 2. Simplify structure; 3. Require all judges to be lawyers.

Approximately one-third of the states have some sort of central-

Continued on page seven

Opinion

OF THE
UNIVERSITY OF BUFFALO
LAW SCHOOL

DONALD P. SHELDON . . .
Editor-in-Chief
ELI H. FRANKEL . . . . .
Feature Editor
DONALD M. SILVERBERG . .
News Editor
JACK BECKER . . . . . .
Associate Editor
RICHARD VALINSKY . . . .
Associate Editor
DONALD SUMMER . . . . .
Business Manager
PROF. DAVID KOCHERY . . .
Faculty Advisor

STAFF

Joseph Carlisi, Bruno Cambarere, Daniel P. Cohen, Stuart. A. Gelman, Peter Klaasesz, Jean Musacchio, Barbara J. Rogers, David Silbergeld, Vito Smiraldo, Jack Werblow.

A Publication of the Student Bar Association and the Alumni Association of the School of Law.

CIRCULATION — 2600

Vol. 9—No. 2 January, 1959

Editorial . . .

Come All Ye Faithful, Joyful And Triumphant, Come Ye, Come Ye,

If the Law School could be personified, the words of this carol would be upon its lips long after the "Yule" has passed.

"She weepeth sore in the night;
and her tears are on her cheeks;
She hath none to comfort her"..
(Holy Scriptures, Lamentations (2).

for she stands alone, without a campus, without tradition. without "Ye Faithful" alumni.

No one can deny that the bar examination is the culmination, the ticket of admission to the practice of Law. But does that mean that one must purge themselves completely from the educational institution that bestowed the "Esq" after your name.

Daily, many of its graduates pass the school by, on the way to the courts, the jail, or offices. But none have taken the time to stop in and just look around. It has been opinioned that about eighty percent of the attorneys in the area have diplomas marked, "THE UNIVERSITY OF BUFFALO SCHOOL OF LAW." But the closest they've come to the building is to use the vestibule as a shield from the weather, or to strike a match on its granite walls, or expectorate as they dash by.

The whole Legal profession suffers from the neglect of the Law School. Its reputation. good, bad, or indigerent, reflects itself upon all who claim it as "alma mater," from its first class to the present.

It is not our contention that there be a waving of banners, the wearing of beanie or blazer. Rather it is our plea that all its graduates band together, chained one to another in an association whose singular objective is the steady improvement of legal education and legal facilities. Only those adjectives synonomous with BEST should be used to describe the Law School that this group will demand: the Best library, the Best faculty, the Best legal research center, the Best in all its needs—including a Tradition and Spirit.

Then the public should be made cognisant of the school. its high standards and its tremendous force on the social scene. They should be informed of the calibre of lawyer that this school can produce, a man whose legal mind has been fashioned in a studio where excellence is common place. Needless to say the benefits derived from such a unity would reflect themselves on the Profession at large, bringing to it honor, and esteem, and reverence—none would dare slur or debase the practicing attorney. His pedestal would be as high as others who claim "professionalism" as the end result of their education. The grumblings and mumblings of the critical would be reduced to a whisper, replaced by repute and respect.

The Law School needs an alumni association, but the profession needs the Law school—but it needs a school that offers the student every opportunity to emerge a competent lawyer. The school needs the alumni, it needs its followers to proudly acclaim. "I graduated from the University of Buffalo School of Law" and all, locally and even nationally, will know without more, that a student of the Law, a master of legal procedure, a "Darrow" of the courtroom, a "Cardoza" of reasoning, has been welcomed by others who had come out before him to represent his fellow man in quest of justice, equity, and rights of a democratic society.

"Come Ye, Come Ye "Faithful" alumni. Permit nothing to obstruct the desire to improve, because neither science, medicine, engineering, nor business can advance or progress until the Law is first obliged. Demand to be heard, demand that all those who graduated from Our School of Law come together, to formulate plans, and begin to work and contribute to making this Law School. Your Law School, The Best.

'Come Ye" and Ye shall be "Joyful and Triumphant."

EHF.

ALUMNI NEWS

Ralph W. Jackson Sr., Class of '50, has just been appointed an assistant district attorney for Erie County and will take office January 1.

Jerome L. Hartzberg, Class of '54 has also been appointed an assistant district attorney for Erie County and will take office January 1.

Gordon R. Gross, Class of '55 and Paul Gonson, Class of '54, have formed a partnership for the practice of law to be known as Gross and Gonson. Offices are at 409 Buffalo Industrial Bank Building.

Robert J. Plache, Class of '58 has been appointed, effective January 2, 1959, an assistant U. S. attorney, by U. S. Attorney John O. Henderson. Mr. Plache has been associated with Kenefick, Letchworth, Baldy, Philips, and Emblidge since his graduation last year from U. B. Law School.

Take Note . . .

The OPINION offers space to alumni for news and notices. Contact News Editor, OPINION, 77 West Eagle St.

—New York Civil Practice

Continued from page one

level, approximately 15 sections of the Civil Practice Act relating to warrants of attachment provide solely for the attaching of "vessels". Annotations to these extant sections are completely non-existent for the past 50 or 60 years. Nevertheless, the sections are still on the books and they remind us of the halcyon days in New York, prior to the complete assertion of federal dominion over all navigable waters, when shipping within the state of New York was a great and booming industry.

Other sections of the Civil Practice Act provide for us insights into the art of draftsmanship. That a statute should be drafted with precision so that the breadth and coverage of the statute is reasonably clear is, of course, admitted.

Some draftsmen of sections of the Civil Practice Act, however, may be accused of having been over-assiduous in foreclosing purely imaginary loopholes. For example, you probably are aware that Section 35 of the General Construction Law provides that words stated in the singular also include the plural. Notwithstanding this provision, the draftsman of Section 699 of the C.P.A., relating to executions, was unrelenting with respect to the coverage of this provision. The introductory words of this provision are as follows:

> Where an action to recover a chattel, *or chattels,* hereafter levied upon by virtue of an execution, *or several executions,* or a warrant of attachment, *or several warrants of attachment,* or to recover damages by reason of a levy, *or levies,* upon detention, sale *or sales* of personal property hereafter made by virtue of an execution, *or several executions,* . . . [emphases added]

Thus reading the Civil Practice Act can be something more than mere the sheer tedium often associated with the perusal of regulatory provisions. Indeed, one of the most striking facets of this 1600-section Act, is the scope and range of its several provisions. By way of illustration, in 1954 the legislature enacted Sections 285-287, providing for a new practice in interpleader in New York. In so doing, the legislature created new *in rem* jurisdiction, providing that a valid judgment could be entered in an interpleader action as against nonresident persons whether or not the stake held by the stakeholder is real property, personal property or *a more debt.* With respect to New York's commercial activities, this legislation is probably the most imaginative, bold, courageous and worthwhile to have been enacted in this area of law within the last half-century. This is general legislation of the finest type. Then we come to the other end of the spectrum; In 1955 the legislature amended Section 687-a, which provides for exemptions to sale and levy by virtue of an execution. As you know, we have always had a 10% exemption on wages; we have a monetary-limit exemption on household items and tools and implements. We have never, however, had any express exemption with respect to a debtor's proceeds from the sale of automobiles, or gasoline, or cattle, or grain, or fruit, or alcoholic beverages, or television sets, etc. Nevertheless, in 1955, the legislature went out of its way to provide as an exemption 60% of a debtor's money which is due or will be due him from the sale of *milk* produced on his farm. The pressure on legislators from milk farmers must indeed be substantial.

Of course, all lawyers have made themselves reasonably familiar with various provisions of the Civil Practice Act. This familiarity has come about through sheer necessity, if for no other reason, On the other hand, the time may be approaching when lawyers' continuing association with the C.P.A. should assume a more questioning aspect. I say this because it may become important in the near future for us to have opinions, based upon objective knowledge and experience, respecting what is good and what is bad about current New York practice. Within the next fifteen months there will be distributed throughout the state the completed proposals for an over-all revision of civil practice in New York. Already, two volumes of such proposals have been distributed by the Advisory Committee on Practice and Procedure, whose current existence is attributable to the efforts and auspices of Senator Mahoney and Assemblyman Heck —as well as Hazard Gillespie, President of the State Bar Association. In January, 1960, these proposed revisions, which, as I said, comprise an over-all revision of all New York practice, will be submitted to the state legislature. The Committee has been operating since 1955, and if its proposals are adopted by the legislature, it will have resulted in the most thorough re-examination of practice which this state has experienced since the days of David Dudley Field, circa 1848.

With respect to the proposals already published, it is clear that very much of New York practice as we already know it will remain *un*changed. True, these proposals offer some stylistic changes, and some substantive changes. That there should be some substantive and stylistic changes in a code which dates back 110 years is inevitable. Basically, however, one of the most basic proposed revisions will have little or nothing to do with one's daily law practice. This is the proposal which calls for the placing of as little of New York practice regulations in *statutes* as possible, and the placing of the bulk of New York practice regulations in court-made rules. Having the greater part of practice regulations in court-made rules means simply that all we lawyers, who are the only New York citizens who know anything about civil practice anyway, may thereafter improve the administration of justice as it affects practice through our bar associations' exertion of pressure upon the judges and other lawyers who will form the Judicial Conference, which will have the responsibility of proposing anl promulgating modifications, changes and repeals of practice regulations contained in Rules. No longer will it be as necessary as now to go to the legislature, a large portion of whose membership is made up of laymen who are not expected to know the subtleties of civil procedure.

Briefly, then, what the Committee on Practice & Procedure contemplates is a replacement of all the CPA and the Rules of Civil Practice with a new set of statutes and Rules, without, however, touching real property provisions, matrimonial actions, or some special proceedings such as the appointment of committees for incompetents. The Committee does not recommend, indeed it discourages, any diminution of trial by jury. On the other hand, a revision of the pleading requirements in New York is contemplated, whereby general statements in a pleading will be acceptable in many cases, and in other cases the pleading Rule will specify exactly what is required. This will have the effect of abolishing the bill of particulars. Today, as you know, the motion for summary judgment is confined to nine enumerated grounds. The proposed revision would extend summary judgment to all actions. Examination before trial, as proposed by the Committee, will be liberalized and expanded, and this will be necessary if the pleading can be stated in more or less general terms. Service of summons will be liberalized by the proposals, and service by the new "certified" mail will be permitted. Generally, statutes of limitation will be shortened under the new proposals. Although this Advisory Committee did very little with the rules of evidence, the proposals thus far indicate that judicial notice will be expanded; the dead man's statute (about which a whole hefty volume has been written by Mr. Greenfield in New York) will be abolished as it now stands, and the matter will be placed within the judge's discretion; and two short rules deal with the matter of opinion testimony. In the next report of the Committee there will be a recommendation, among other things, that warrants of attachment be issuable in actions other than action for the recovery of money *only;* and, as has been proposed many times in the past, the Committee will propose the abolition of the provisional remedy of civil arrest.

These are the kinds of substantive changes which the Committee has thus far proposed, and it may well be that we should continue to familiarize ourselves with the current provisions to see whether

Continue on page four

—New York Civil Practice

Continued from page three

the proposed changes work any improvements.

With respect to changes which have already been made in the CPA, I had intended to go back much further than the last 5 years. However, my enthusiasm for doing so was blunted when I discovered that, in the short 21 years of its existence, the Judicial Council alone was responsible for 355 changes in the CPA. Because it is impossible to discuss the impact of every single change which has taken place I should simply like to discuss a few which seem to me to be of the most importance. First of all, and briefly, I think it is certainly true that the Legislature very appropriately recognized serious defects in a few of the decisions relating to the admissibility of evidence. As many of you may recall, in the decision of the Court of Appeals in *Matter of Coddington*, in 1954, the majority of the court held that the physician of a testatrix. after her privilege had been waived, could not testify as to the deceased's mental or physical condition which he actually observed. The reason given was that such testimony would tend to disgrace the memory of the dead. This has been, as you know, the reason for the exclusion of such evidence in many cases. However, it was recognized by the legislature that if a physician could not testify as to such observed facts on this ground he would be under a greater disability as a witness that would be a *lay* witness testifying as to the same observed facts. In other words, testimony of a deceased's mental or physical condition which a witness actually observes may not always tend to disgrace the memory of the dead. To resolve this problem, the legislature amended CPA 354 to make it clear that actual physical or mental conditions are not always "disgraceful".

In another decision relating to evidence, with which I am sure you are all familiar, the Court of Appeals held, in the *Lanza* case, that the communications between a lawyer and a client occuring in a jail cell would be admissible in an administrative proceeding. The client had no knowledge, as you recall, that a tape recording was being made. Whatever the reputation of any accused, it is nevertheless true that this decision could have broad and undesirable repurcussions. Therefore, this year, Section 353 and 353-a of the CPA were enacted to insure further the confidence of lawyer-client communications, and to overrule the decision in the *Lanza* case.

One other general area of legislation deserves mention. I think it is safe to say that too few of us realize how broad is the power and jurisdiction of the courts of this state today. It is the rare action indeed where a valid judgment cannot be rendered by a court of this state, such court having either jurisdiction over a THING in the state, or jurisdiction of the person as provided by the various provisions of the CPA. I have already mentioned the interpleader legislation enacted in 1954. Prior to 1954, it was the law of the State of New York that a person holding a sum of money either representing payment of a debt or otherwise, to which sum of money two or more persons made adverse claims, must subject himself to multiple suits and possible liability if any of those adverse claimants were not within the state. On the other hand, if the property which the prospective harassed defendant had was real property or tangible personal property, he could get a valid judgment in an interpleader action determining all adverse rights to the property, including his own rights, whether the claimants were within the state or not. This has all been changed by the interpleader legislation of 1954. It strikes me that this is a very important bit of legislation to keep in mind for a lawyer in any situation where a debt or any sum of money is involved, and he fears that there are persons other than the one presently claiming it who may make demands to it. The legislation is noteworthy because, superficially at least, it tends to fly in the face of decisions of our Court of Appeals and the U. S. Supreme Court tending to hold that it may be unconstitutional.

Finally, with respect to the jurisdiction of our courts, we have for some time been familiar with Section 52 of the Vehicle and Traffic Law, relating to service of summons on a non-resident motorist. Even this section, broad as it is in conferring jurisdiction on our courts, has this year been expanded to permit such service even though the accident in question did not occur on a public highway and even though the defendant was not the owner of the car involved—so long as it was used in this state in his business.

By way of conclusion, I should like to reflect again upon the variety of items which a reader of our CPA may discover. I have referred to, at one end of the scale, the very high level legislation creating our new interpleader practice; and, on the other hand, the kind of quasi-special legislation which permits a milk farmer to have an exemption under our execution statutes. In addition, the CPA tends to incite one's imagination as to who was responsible for proposing particular legislation. As you know, the general rule of law has always been that the power of a committee of an incompetent terminates upon the death of the incompetent. Many committees of incompetents sem to have taken this rule literally and seriously, apparently packing and leaving the premises at the very moment when the incompetent breathed his last. In closing, I leave it up to you to determine who was responsible for fostering the bit of legislation I shall mention. Was it the Association of Sanitation Officers? Was it an organization of morticians? The legislation is an amendment to 1383 of CPA which always provided as follows: "Where a person, of whose property a committee has been appointed, dies during his incompetency, the power of the committee ceases . . . "

Then there follows the amendment:

"Except that it shall be the duty of the committee to provide for his burial."

Legislative Changes Affecting Civil Practice

1954-1958

Administration of Justice

Judiciary Law 230-239 abolished Judicial Council and created Judicial Conference. (1955)

Judiciary Law 475-a permits attorneys to acquire liens prior to commencement of actions. (1955)

CPA 980-a amended to regulate moneys recovered by incompetents and infants. (1955, 1956)

Judiciary Law 116-a amended, changing method of appointment of Official Referees. (1956)

Rule 150, R.C.P., amended to require that notes of issue in automobile cases shall state that the action arose out of a motor vehicle accident.

Appeals

CPA 588 (1) (2) amended to enlarge appeals to Court of Appeals where constitutional questions had been raised. (1954)

CPA 573 amended to permit trial judge to grant new trial on his minutes or on ground of new evidence for period of 20 days

Continue on page five

—New York Civil Practice

Continued from page four

after filing of a notice of appeal. (1955)

CPA 99 enlarged to permit extension of time for appeal where attorney becomes physically or mentally handicapped. (1956)

CPA 592 (2) amended to provide procedure to acquire permission from Appellate Division for appeal to Court of Appeals. (1957, 1958)

Arbitration

CPA 1451 amended to permit motion to stay proceeding to be made in any court where action or proceeding is pending. (1954)

CPA 1454 (1) amended to provide that right to counsel in arbitration can only be waived by a writing. (1955)

CPA 1460-a added to permit an arbitration award to be entered upon confession. (1957)

CPA 1340 added to permit the enforcement of agreements for appraisal or valuation. (1958)

Evidence

CPA 354 amended to clarify right of physician to testify respecting a deceased. (1955)

CPA 345-d added making illegally-obtained eavesdropping evidence inadmissible in civil actions. (1957)

CPA 412, 414 amended to regulate the production of hospital and public records under subpoena duces tecum. (1957, 1958)

Lien Law 189 (5) amended limiting right of inquiry into hospital records. (1057)

CPA 353 and 353-a amended and added to insure further the confidence of lawyer-client communications. Overrules Court of Appeals' decision in *Lanza*. (1958)

Examination Before Trial

CPA 309-a amended to permit interrogatories to be framed and settled in English *and* a foreign language. Costs of interpretation and use of experts provided. (1954)

CPA 290, 291, 296, 299 and 405 amended to permit the production of specified documents on notice, rather than on order or subpoena. (1955)

Gen. Mun. Law 50-h added, requiring claimant against city to be examined. (1958)

Judgments and Enforcement

CPA 687-a, 665 (5) (7) amended to enlarge exemptions from levy under execution. (1955, 1957, 1958)

CPA 777 amended to permit supplementary proceedings to be instituted in County Court. (1955)

CPA 636 amended to require that execution be delivered to a sheriff regardless of fact he may have been party to the action in his official capacity. (1957)

CPA 684 amended to provide for garnishee execution against employees of "any public benefit corporation". (1957)

CPA 502 and 530 amended to require further information to be incorporated into judgment rolls and satisfaction pieces. (1958)

Jurisdiction and Process

CPA 67 (1) (3) amended to increase County Court jurisdiction from $3000 to $600.0 (1954)

CPA 110-b added, providing for transfer of causes from higher to lower court. Defendant's consent not required if he has no counterclaim. (1954, 1955)

CPA 285, 286 and 287 enacted, creating new interpleader practice. Creates new in rem jurisdiction even if the "stake" is a debt. (1954. Section 287 watered down by amendment in 1957)

CPA 1421 amended to permit service of precept in action to recover possession of realty either personally or by leaving it with person of suitable age and discretion. (1954)

CPA 218-a added, permitting civil action to be commenced without the use of a summons or complaint. (1956)

Gen. Mun. Law 50c amended to require that claimant against city must serve his notice of claim in *duplicate*. (1956)

CPA 232 (1) amended to permit service by publication where action is one to declare void a foreign divorce against a resident who did not appear. (1958)

Veh. & Tr. Law 52 amended to permit service on non-resident motorists via Secretary of State and registered mail if the vehicle was used in defendant's business in this state, and whether or not the accident occurred on a highway of this state. (1958)

Gen. Bus. Law 250 (applying to service on non-resident aircraft operators) amended primarily to render it constitutional after the section was voided by the Second Department. The death must have been accasioned or the injuries sustained in this state. (1958)

CPA 1217-a added, providing for the service upon unlicensed foreign corporations via Secretary of State and registered mail in actions by attorney-general. (1958)

Pleading

CPA 112-i added, providing that no splitting of causes of action shall result by successive actions for the recovery of payments of pension, retirement or deferred compensation. (1956)

Real Property

CPA 1410, 1411 amended to provide new situations in which persons can be removed from possession of real property. (1955, 1956)

CPA 120-125 (notice of pendency) amended to provide for recording in the block index filing system used in the City of New York, and limits effectiveness of notice of pendency to three years, and provides for cancellation of the notice with damages for misuse of the notice. (1956, 1957, 1958)

Special Proceedings

CPA 1296 anended to provide an additional ground which may be considered by courts in reviewing decisions in Article 78 proceedings. (1955)

CPA 1377-b added to permit committee of incompetent to petition court to state that property is being withheld from him by another person. (1956)

CPA 1383 amended to require a committee of an incompetent to bury the latter when he dies. (1956)

CPA 1287 amended to provide that Article 78 proceeding against a County Judge shall be brought in Appellate Division. (1957)

CPA 1294 amended to provide time limits for applications to correct papers in Article 78 proceedings.

Statutes of Limitation

CPA 49 and 1139 amended to provide new 3-year period of limitation in which to bring action to annul a marriage, where the ground is fraud. (1955)

CPA 992 amended to make statewide the 1-year period of limitation for an action to remove an encroachment on property of 6 inches or less. (1955)

Substantive Law

CPA 337-a added creating immunity from liability for radio and TV stations where defamatory remarks were made by a "legally qualified candidate" for public office. (1955)

Veh. & Tr. Law 59 amended to render a motorist liable whether or not the accident occurred on a public highway. (1958)

Trials

CPA 426-a added, providing for the manner in which the right to trial by jury may be waived in Erie County. (1955)

Judiciary Law 650-685 added, effectuating a unified system of selection of jurors in counties of over 100,000 outside the City of New York. (1955)

CPA 79-a added, providing that the death of a judge shall not impair any verdict, report or decision theretofore rendered by him. (1958)

—Continue Learning . . .

Continued from page one

are the foundation walls upon which your legal structures will be built.

In later years undoubtedly some of your number will become members of the Judiciary. The promised land has not yet been reached. There you will be faced by counsel who are silently examining your legal knowledge. Higher courts will examine your decisions and if perchance you reach such higher courts you will be under the scrutiny of your associates who will not always be silent as to their views of your knowledge of the law.

All of this, of course is stating the obvious. It is prefatory to a frank appeal to each of you to continue your legal education. It has been said that "The process of Justice is never finished, but reproduces itself, generation after generation, in ever changing forms." Judges who sit in either trial or appellate tribunals are from day to day disturbed by the apparent absence of adequate legal research by many attorneys before they present their cases in court. You will be glibly told by associates that the economic pressures of a successful law practice makes it impossible to study the legal problems involved in a given case to discover what the applicable law is and how those legal principles have evolved through the years.

Sir Edward Coke told his students that "Knowledge of the law is like a deep well, out of which each man draweth according to his understanding. He that reacheth deepest, he seeth the amiable and admirable secrets of the law." To your possible reply that there is a lack of time for such study let me respond by stating that the man who spoke those words served often in Parliament, was Attorney General for 13 years, Chief Justice of Common Pleas. then King's Bench. But in his leisure time he compiled 11 volumes of law reports covering 600 cases, wrote 4 volumes on the Laws of England, the first being the famous commentary upon Littleton.

You have chosen a profession that enables you, if you so will it, to spend a goodly portion of your life in intellectual pursuits. "Be inspired with the belief," said Gladstone, "that life is a great and noble calling; not a mean and grovelling thing that we are to shuffle through as we can, but an elevated and lofty destiny." If this is the challenge to every man, what greater opportunities have been presented to you to make the years to come a day to day pursuit of the mysteries of the law and not mere drudgery in the quest for material things.

From time immemorial those ending their formal education have been told that they are entering their life's work at a challenging point in history. It is true that each generation faces new problems and an ever changing world. It seems to me, however, that all of us engaged in the administration of justice must recognize that laymen are looking to us for some changes in the old order of things. There is a fermenting interest in court reform. There are those who believe that our court structure, that has remained substantially unchanged for a century, should undergo drastic revision and so-called streamlining. Others hold the firm opinion that our present court system in fundamentally sound while recognizing the need for improved administrative procedures.

The distressing thing to many of us is the fact that the ball of court reform, so to speak, is being carried towards various goal lines by organized groups of laymen. With a few notable exceptions neither the Bar Associations nor the individual lawyers have shown any particular interest in this area. This in unfortunate because attorneys, of course, have superior

Continue at bottom of next column

Barrister's Ball Saturday, April 4

The Social Committee, under the chairmanship of Ronald Tills, is making plans for the dances and parties which will be held during the remainder of the school year.

The Barrister's Ball is the highlight of the social season. It is hoped that this season's ball will surpass all previous affairs in elegance and attendance.

Committees are already formed for the Ball. The Social Committee plans to make this event to be long remembered. The date is set for Saturday, April 4, 1959.

If the plans develop as expected, this will culminate the S.B.A. Conference which will be held at U.B. Law School this year.

Ramsey to Head SBA

The Student Bar Association of the University of Buffalo Law School will have at its helm for the 1959 academic year the able leadership of Leroy T. Ramsey. He ran unopposed for the presidency in the elections held last month.

Also elected at that time were the Freshman and Junior directors of the SBA. They are as follows: Juniors — Joseph Augustine, Jack Becker, Anthony Sortino, Vincent Veltre; Freshman—Joseph McCarthy, Peter Notaro. Barbara Rogers, Paul Weaver.

The senior directors will remain in office until June.

—Continue Learning . . .

factual knowledge as to what is needed in the way of a court structure which does not necessarily have to be a beautiful streamlined diagram on a sheet of white paper. Here you will find a challenging field in which to labor eithe rindividually or as a member of an organized bar group.

May you have the wisdom to establish the perfect balance between material success and intellectual pursuits that will bring you from year to year the satisfaction of a life well spent.

For Your Constitution . . .

* * *

But the sunshine aye shall light
light the sky,
As round and round we run
And the truth shall ever come
uppermost
And justice shall be done.
—Charles Mackay

"Professor," asked the bright young law student, "could a blind man be made liable for his note payable at sight?"

"Son," retorted the professor. "that could only be brought out if the blind man was also given a hearing."

His campaign was a pleasant one,
And worthy here of note;
He only kissed the babies who
Were old enough to vote.

Man's capacity for justice makes democracy possible, but man's inclination to injustice makes democracy necessary.
—Reinhold Niebuhr

The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law.
—Justice Oliver Wendell Holmes, Jr.

—Necessary Legal Reform

Continued from page one

ized administration, therefore there is adequate precedent. Such centralization is necessary for the more efficient use of Judge-power and for a speedier disposition of Litigation before the courts.

Today in New York State there are 21 separate state and local courts which have very little to do with each other and give rise to very complicated jurisdictional questions. To overcome these difficulties and promote a more efficient judiciary the Judicial Conference of the State of New York has recommended an integrated court system. It would consist on the Appellate level of the Court of Appeals and the Appellate Division as at present. The state wide trial court structure would have as its keystone the Supreme Court as it is presently constituted with general jurisdiction at law and in equity, a Surrogate's Court specializing in the administration of the estates of deceased persons, and a Family Court with specialized services for the solution of all problems arising in the field of domestic relations.

In the City of New York, the Conference recommended the creation of only two local courts, one for civil cases with upper monetary limits of $10,000 and one for criminal cases for the adjudication of lesser criminal charges. For the communities outside of New York City, the Conference recommended a County Court, manned by full time judges, with civil jurisdiction and with monetary limits of $10,000 and with full criminal jurisdiction. For upstate localities there would also be a uniform city court structure mandatory for the larger cities and optional for the smaller ones. For the rural areas a State-wide District Court would replace the many present local judicial offices. The plan would eliminate from the court system all the various city courts, police courts, justice of the peace courts, police justices and other local tribunals outside New York City. On the State level it would abolish the Court of Claims as a separate tribunal. The Conference also recommended for the courts a strong centralized administration which would, at the same time, provide machinery for the adequate and prompt recognition and solution of local problems.

Judge Desmond recommended that one of the practical steps toward a modern court system would be to give to the courts or to the Judicial Conference the function of making rules of procedure. He said, "I would not take from the legislature the power over procedural questions which invade public policy such as statute of limitations, etc. I would, if necessary give the Legislature some sort of veto power over all procedural rules adopted by the courts. But I insist—and, again, every single recognized authority on the subject agrees—that the every-day, workday, bread-and-butter job of adapting procedure to changing needs is a job for the courts themselves."

"Another practical first step should be taken—toward making the bar of this state a real professional group. Outsiders find it hard to believe that there does not exist anywhere an up-to-date official list of those licensed to practice law in New York State. It may be a long time before we have, in New York, as in half the other states, an integrated self-governing bar of which every lawyer is a responsible member. Today only 1 of 4 New York State lawyers is a member of our New York State Bar Association—in Colorado for instance under a voluntary plan 90 per cent of all lawyers belong to the State Bar Association. But at the very least we should know, as we do not now know, how many lawyers there are in New York State and who and where they are. Annual registration with a small registration fee would put us in line with other occupational groups and provide a fund to help make the whole bar of the State self-governing and self-disciplining in the public interest."

"Now for the last of my steps, immediately necessary and immediately possible, toward making a professional guild out of New York State's thirty-five thousand or more lawyers. That is, to associate the profession more closely with legal education in this State. Here again I am urging no innovation. In the fourteenth and fifteenth centuries with the growth of the immortal Inns of Court the bar assumed its rightful role in promoting legal education. Today the contact of the general bar with ten law schools in our State is slight indeed. Nothing could be more important to a real professionalism than a lively intelligent cooperation between the lawyers and the schools. Formal bar association committees are not enough. We should emulate our brothers in medicine who give so freely of their time and resources to aid in

Continue next column

What's Your Opinion?

The OPINION welcomes your comments and views on any matter concerning the study of law, the legal profession, or any subject of concern to the legal comments as a whole.

Please address your remarks to

Editor-in-Chief
OPINION
University of Buffalo Law School
77 W Eagle Street
Buffalo, New York

All material sent must be subscribed to.

Great cases like hard cases make bad law.
—Justice Oliver
Wendell Holmes, Jr.

Genius is one per cent inspiration and ninety-nine per cent perspiration.
—Thomas Alva Edison

The Constitution does not provide for first and second class citizens.
—Wendell Lewis Wilkie

—Necessary Legal Reform

the work of medical schools. The lawyers, too, could help raise standards of professional competence, give themselves a new and absorbing interest in life and combat anti-intellectualism by becoming active in law school alumni associations and law school advisory groups. Your help will be welcomed by the schools."

A New Year's Prayer Answ'red

by STUART A. GELLMAN

Oh Lord, why is it that we mortals be,
In mind with flaming love and blinding hate,
And things we want we cannot have for fate
Repeals our thoughts of good in time of glee.
And why are souls of good to rest ne'er late,
While evil ones go on eternally.
And troubles pressed upon the mind are free,
While much of good is costly to create.
"You are," the Lord doth answered unto me,
"An owner of ideas and many-a trait,
But thoughts of mine you cannot illustrate,
For then what challenge would your living be.
So think this New Year's joy instead of sorrow,
And consider first today and then tomorrow."

Announce Results of 1958 Lawyers Census

The triennial census of the legal profession in the United States, just completed by Martindale-Hubbell, Inc., places at 262,320 the number of "lawyers accounted for" in the nation. This is a gain of 8.6 per cent over the comparable figure of 241,514 in the last survey in 1955.

One distinct trend revealed was a decline in "solo" practitioners. In the last three years the number of individual practitioners dropped by five thousand. from 127,389 to 122,389. At the same time, the number of lawyers practicing in partnerships or as associates increased by an almost identical number.

The statistical report was prepared by Martindale-Hubbell for the American Bar Foundation. Here is a thumbnail comparison of the 1958 lawyer census figures with those of 1955:

Total accounted for	262,320	241,514
Lawyers listed	235,783	221,600
Private practice	188,955	189,423
Government service	24,245	21,279
Judicial	7,910	7,903
Salaried in industry	18,911	15,063
Educational (salaried)	1,504	1,351
Other private employment	639	234
Inactive or retired	7,661	6,581

Here, in brief, are some of the other major findings of the 1958 report:

In 1958, 78,831 lawyers (30.05 per cent of the total) were found to be residing in eight key cities: Boston, Chicago, Cleveland, Detroit, Los Angeles, New York, Philadelphia, and Washington, D. C.

A total of 64,809 lawyers hold salaried positions. Of this number, 24,245 (37.4 per cent) are on the staffs of city, state or federal governments (7,787 with city or county; 4,000 with state, and 12,458 with federal government).

There are 229,480 male lawyers (97.3 per cent) and 6,303 female attorneys (2.7 per cent).

More than half (160,770) of the nation's lawyers today are between the ages of 34 and 63, 36,225 are under 33 and 2,089 are 83 or over.

Over 72 per cent (188,883) of the lawyers hold law degrees and nearly 47 per cent (122,767) a college degree.

According to an independent survey made in connection with the publication of the American Medical Association's 1598 directory the number of physicians in the U. S., including those now retired but excluding 1957 medical school graduates, was placed at 226,625. This would compare roughly with the "listed lawyers" total of 235, 783.